



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER

ADM: 34

**EFFECTIVE
DATE:
03/03/2011**

**ORIGINAL
ISSUED ON:
11/30/2001**

SUBJECT: SEXUAL AND RACIAL HARASSMENT AND RETALIATION

REVISION NO:

4

1.0 PURPOSE

The purposes of this policy are to define sexual harassment, racial harassment and retaliation; to provide procedures for the reporting and investigation of sexual harassment, racial harassment and retaliation claims; and ensure that violations are prevented and fully remedied.

2.0 POLICY

It is the policy of the Department of Public Safety to vigorously enforce anti-discrimination laws. The DPS will not tolerate issues involving sexual and racial harassment and retaliation.

3.0 APPLICABILITY

This policy applies to all employees of the Department of Public Safety (DPS).

4.0 REFERENCES

- A. Personnel Board Rule 1.7.6.13 NMAC**
- B. Title VII of the Civil Rights Act of 1964 as amended**
- C. The New Mexico Human Rights Act**
- D. Americans with Disabilities Act**
- E. Civil Rights Act of 1991**
- F. CALEA Chapter 26 - Disciplinary Procedures**

5.0 DEFINITIONS

- A. Chief** - Deputy Secretary of Operation, Chief of State Police.
- B. Client** - A person requesting or receiving services from DPS.
- C. Complainant** - A person making an oral or written report of sexual or racial harassment or retaliation to the EEO Officer or any supervisor.
- D. Department** - Department of Public Safety.
- E. EEO Officer** - The DPS Equal Employment Opportunity (EEO) Officer is the individual designated by the Secretary of the Department as responsible for the investigation of all sexual and racial harassment and retaliation complaints and all other complaints of

SEXUAL AND RACIAL HARRASSMENT AND RETALIATION

discrimination and the coordination of sexual and racial harassment training. The Secretary of the Department may designate as many EEO Officers as deemed necessary. All EEO Officers will receive training in the recognition, investigation and mediation of sexual and racial harassment and retaliation complaints and all other complaints of discrimination.

- F. Employee** - For purposes of this policy only, employee shall be defined as a person employed in a position in the Department, including full, part-time and probationary employees, recruits and applicants for employment with the DPS.
- G. Racial Harassment** - Is a form of race discrimination. It is prohibited by federal and state law and this policy. Unwelcome racial comments and derogatory or adverse treatment that is racial in nature or motivated by racial animus, and other verbal or physical conduct of a racial nature constitute racial harassment when:
1. Submission to such conduct and/or comments is made either explicitly or implicitly a term or condition of an individual's employment; or
 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 3. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
 4. For purposes of this policy, the term racial harassment includes discrimination on the basis of national origin or ethnicity.
 5. Racial Harassment can involve individuals being harassed either by members of the same or another racial or ethnic group. Racial harassment can involve a harasser in a position of greater authority than the person being harassed; individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.
 6. While racial harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct are included in Exhibit A, attached to this Policy. Racial harassment includes racially oriented conduct that is sufficiently pervasive or severe to unreasonably interfere with an employee's job performance or create an intimidating, hostile or offensive work environment for employees or clients.
- H. Respondent** - The individual accused of sexual or racial harassment or retaliation in an oral or written complaint made to the EEO Officer or any supervisor.
- I. Retaliation** - Retaliation is prohibited by federal law and state law and this policy. Retaliation occurs when an individual makes a report, files a formal charge or speaks up against conduct which s/he reasonably believes to constitute sexual or racial harassment, or when an employee cooperates in good faith in an investigation, proceeding or hearing of an allegation of sexual or racial harassment and then is treated negatively by his or her employer or another employee because of his or her complaint or report. While retaliation encompasses a wide range of conduct, some examples of specifically prohibited conduct are included in Attachment A of this Policy.

J. Secretary - The Cabinet Secretary of DPS.

K. Sexual Harassment - Sexual harassment is a form of sex discrimination. It is prohibited by federal law, state law and this policy. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
4. Sexual harassment can involve males or females being harassed by members of either sex. Sexual harassment can involve a harasser in a position of greater authority than the person being harassed; individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.
5. Sexual harassment includes sexually oriented conduct that is sufficiently pervasive or severe to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive working environment for employees or clients. While sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct are included in Exhibit A, attached to this Policy.

L. Supervisor - For purposes of this policy, a supervisor is any law enforcement or civilian employee of the DPS who is charged with overseeing the work assignments of one or more individuals, whether civilian personnel or commissioned officers, as well as all uniformed employees holding the rank of sergeant or higher, and the Deputy Secretary and Secretary of the DPS.

6.0 PROCEDURE:

A. General Guidelines

1. It is the policy of the DPS:
 - a. This statement sets forth the policy of the DPS concerning sexual and racial harassment and retaliation. This policy covers all employees.
 - b. Sexual and racial harassment and retaliation in the workplace are illegal and shall not be tolerated by the DPS. The DPS is committed to the vigorous enforcement of anti-discrimination laws and this policy and has adopted a **zero tolerance policy** for sexual and racial harassment and retaliation. This policy will be enforced by taking appropriate disciplinary action, up to and including

SEXUAL AND RACIAL HARRASSMENT AND RETALIATION

termination, against any individual who engages in sexual or racial harassment or retaliation and against supervisors who were or should have been aware of the harassment or retaliation and did not report or respond to it.

- c. All individuals shall promptly report sexual and racial harassment and retaliation, in accordance with the procedures described below. Supervisors must take the steps set forth in this policy in response to any written or oral report. Retaliation against any individual for making a good faith report regarding conduct which s/he reasonably believes to be sexual or racial harassment or for otherwise opposing what s/he believes to be unlawful discrimination is illegal and will not be tolerated. Retaliation against any individual for participating in good faith in an investigation, proceeding or hearing of a complaint of sexual or racial harassment is also illegal and will not be tolerated.
- d. Employees are prohibited from sexually and racially harassing and retaliating against other employees whether or not the incidents occur on the Department's premises and whether or not the incidents occur during working hours. Employees are similarly prohibited from sexually or racially harassing or retaliating against clients of the Department, who have the right to apply for and receive services and benefits free from any form of sexual or racial harassment or retaliation.
- e. Consensual sexual or romantic relationships between employees are strongly discouraged and prohibited if one employee has supervisory authority over the other employee.
- f. All employees have a responsibility to prevent sexual and racial harassment and retaliation in the workplace. Specific responsibilities of employees are detailed further in this policy.
- g. Employees have a right to report sexual and racial harassment and retaliation in the workplace to any supervisor or the EEO Officer, in accordance with this policy and to have their allegations investigated and promptly resolved.

B. Reporting Procedures

- 1. All incidents of sexual or racial harassment, or inappropriate sexually or racially oriented conduct, retaliation or any other incidents of discrimination shall be reported as provided in this policy.
- 2. The EEO Officer is: Janice Bruce Hightower, Office of the Secretary, New Mexico Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87504 (505) 827-9185.
- 3. Individuals shall bring complaints of sexual and racial harassment and retaliation to the attention of the DPS EEO Officer or designee, or any DPS supervisor. Any employee who believes that he or she has been subjected to sexual or racial

SEXUAL AND RACIAL HARRASSMENT AND RETALIATION

harassment or retaliation or is aware of such conduct shall report the alleged conduct as soon as possible.

4. An individual who is subject to sexual or racial harassment or retaliation or who is aware of such conduct within the DPS, shall make either an oral or written report to (a) DPS EEO Officer; or (b) any DPS supervisor.

Clarification
added.

- 5. Individuals are not required to follow the chain of command in reporting harassment or retaliation to supervisory personnel. If the harasser is the employee's direct supervisor, the employee can report the incident/s to any supervisor, or directly to the DPS EEO Officer or designee.
6. Employees may be able to stop or prevent sexual harassment by immediately and directly expressing their disapproval of an individual's sexually or racially inappropriate conduct. Individuals are not required to make a report or complaint to the individual they believe to be sexually or racially harassing or retaliating against them.
7. Complaints should be reported as soon as possible after an incident of alleged sexual or racial harassment. To ensure the prompt and thorough investigation of a sexual harassment, racial harassment, retaliation or any other incident of discrimination complaint, the complainant shall provide as much of the following information as possible. A complainant shall make an oral or written complaint, whether or not all of the following information is known:
 - a. The name, division, and position of the person or persons allegedly causing the harassment or retaliation.
 - b. A description of the incident(s) including the date(s), time(s), location(s) and the presence of any witnesses.
 - c. Whether the complainant believes that the incident(s) had any effect on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of his or her employment.
 - d. The names of other employees who might have been subject to the same or similar harassment or retaliation.
 - e. Whether the complainant has taken any steps to try and stop the harassment, retaliation or other discrimination.
 - f. Any other information the complainant believes to be relevant to the harassment, retaliation or discrimination complaint.
8. Any supervisor who receives a written or oral report of sexual or racial harassment or retaliation shall immediately forward the report to the DPS EEO Officer, regardless of the supervisor's assessment of the veracity of the complaint. Neither supervisors nor the DPS EEO Officer may require an individual to reduce his or her

complaint to writing. The supervisor or DPS EEO Officer shall immediately reduce any oral complaint to writing on the Sexual/Racial Harassment and Retaliation Complaint Form attached hereto as Exhibit B and obtain the complaining employee's signature on this form. Supervisors shall take this step before forwarding the complaint to the DPS' EEO Officer. In the event that an employee refuses to sign the Sexual/Racial Harassment and Retaliation Complaint Form, the supervisor or EEO Officer shall so note on the form and process it as though it had been signed.

9. Complaints against the EEO Officer should be reported directly to a supervisor or the Secretary who shall follow the investigation procedures set out in the Sexual and Racial Harassment and Retaliation Procedure for the EEO Officer.

C. Responsibilities of All Employees

1. All employees shall report sexual and racial harassment and retaliation about which they are aware.
2. All employees share responsibility for ensuring that the DPS is a workplace free of sexual harassment, racial harassment, and retaliation.
3. Employees are subject to discipline, up to and including termination, for engaging in conduct prohibited under this policy or for engaging in conduct that assists or encourages others in engaging in sexual harassment, racial harassment or retaliation.
4. If employees believe that they have been subject to sexual or racial harassment or any unwanted sexual advance, they shall:
 - a. Make their unease and/or disapproval directly or immediately known to their harasser, if they are comfortable doing so.
 - b. Report the incident, and any incidents of retaliation to a supervisor or the Department's EEO Officer.
5. All incidents of sexual or racial harassment, inappropriate sexual or racial conduct or retaliation should be reported regardless of their seriousness.
6. All employees are required to cooperate truthfully and honestly, when requested, with any investigation into allegations of sexual or racial harassment or retaliation.
7. The performance evaluations of all employees shall evaluate compliance with this policy. In addition, when deciding whether an employee should receive a promotion, award, or other performance-related benefit, DPS shall consider the employee's compliance with this policy. Individuals who believe they have been subjected to sexual harassment, racial harassment or retaliation shall not be negatively impacted in their performance evaluations or in their receipt of

SEXUAL AND RACIAL HARRASSMENT AND RETALIATION

performance-related benefits as a result of their failure to report sexual harassment, racial harassment, or retaliation.

D. Additional Supervisory Responsibilities

1. Supervisors must accept all reports of sexual or racial harassment and retaliation and forward those reports immediately to the EEO Officer, regardless of whether the reporting employee is someone over whom they have direct supervisory responsibility. Supervisors shall put any and all oral reports in writing on the Sexual/Racial Harassment and Retaliation Complaint Form to be signed by the employee except as provided in 5.0(B)(8), before they are forwarded.
2. Supervisors must deal expeditiously and fairly with allegations or observations of sexual and racial harassment and retaliation by or against employees whether or not there has been a written or oral complaint. A supervisor must:
 - a. Act promptly to notify their Division Director and the EEO Officer, who will advise the Secretary.
 - b. Take immediate corrective action against any individual under their supervision to prevent prohibited conduct from recurring.
3. A supervisor's warning to an employee, combined with appropriate follow-up supervision, training and/or monitoring of the employee's behavior, may be sufficient remedial action to prevent the occurrence of sexual or racial harassment or retaliation.
4. Supervisors shall report any individual who is not under their supervision and whom they are aware that has engaged in sexual or racial harassment or retaliation to the EEO Officer.
5. Supervisors shall regularly inspect for and immediately remove any sexually or racially explicit, suggestive or offensive photographs, magazines, letters, postcards, posters or other related materials from any office area, district, sub district and all other facilities under their supervision and shall draft an intra-departmental correspondence (IDC) identifying the employee found responsible for displaying such materials and forward it to the EEO Officer for further investigation, if necessary, and appropriate disciplinary action.
 - a. A supervisor shall not:
 1. Discourage any individual from making a report of sexual or racial harassment or retaliation.
 2. Refuse to accept a report or fail to reduce it to writing on the Sexual/Racial Harassment and Retaliation Complaint Form.

SEXUAL AND RACIAL HARRASSMENT AND RETALIATION

3. Fail to forward any report to the EEO Officer, whether or not signed by the complainant.
4. Insist that any report be put in writing by the complainant.
5. Performance evaluations for supervisors shall evaluate compliance with this policy as well as enforcement and communication of this policy with respect to employees under their supervision.
6. Supervisors shall be subject to discipline, up to and including dismissal, if they were or should have been aware of sexual or racial harassment or retaliation and did not report and/or respond to it as required by this policy.
7. Supervisors shall evaluate that employees under their supervision are in compliance with this policy. Supervisors shall enforce and communicate this policy to employees under their supervision.

E. EEO Officer Responsibilities

1. The EEO Officer is responsible for:
 - a. Ensuring that both the complainant and the respondent are aware of the seriousness of a sexual or racial harassment or retaliation complaint. In no event shall the EEO Officer attempt to discourage an individual from making a complaint.
 - b. Explaining the Department's sexual and racial harassment and retaliation policy and investigation procedures to the complainant and the respondent, and providing them with a copy of this policy and a copy of the procedure for investigating and resolving complaints.
 - c. Referring the complainant and/or the respondent to the Employee Assistance Program for counseling and referral services, if appropriate.
 - d. Notifying the Department's Cabinet Secretary, if criminal activities are alleged.
 - e. Conducting an impartial investigation of complaints of alleged sexual and racial harassment and retaliation and the preparation of a written report and recommendation to be submitted to the Secretary or Chief, in accordance with this procedure.

F. Discipline

1. Any employee found to have engaged in sexual or racial harassment or retaliation or to otherwise be in violation of this policy shall be subject to disciplinary action up to and including termination. Individuals who believe they have been subjected to sexual harassment, racial harassment or retaliation, who fail to report it, shall not be subject to discipline. Disciplinary action is mandatory when the EEO Officer

SEXUAL AND RACIAL HARRASSMENT AND RETALIATION

determines that the accused individual has engaged in sexual or racial harassment or retaliation. The nature of the disciplinary action shall be determined, for the commissioned law enforcement personnel by the Chief after consultation with the EEO Officer, and for civilian personnel, by the Secretary of DPS after consultation with the EEO Officer, based on the totality of the circumstances involved, but an employee is not entitled to progressive discipline for the first or subsequent incidence of sexual or racial harassment or retaliation and employees are advised that an initial incident of sexual or racial harassment or retaliation may result in discipline up to and including termination and as determined by the Chief or the Secretary of DPS.

2. The mandatory minimum discipline for an employee found to have engaged in sexual harassment, racial harassment or retaliation is a written reprimand. The maximum discipline for an employee found to have engaged in sexual harassment, racial harassment or retaliation is dismissal. Persons who violate this policy may also be subject to civil damages or criminal penalties in accordance with state and federal laws.
3. If disciplinary action is to be taken against the EEO Officer, then the same procedures will apply except that the disciplinary action shall be determined by the Secretary of the DPS.
4. The enforcement of disciplinary action shall be subject to any rights to challenge disciplinary action in accordance with the DPS' policy or other rules, regulations or laws regarding discipline.

G. Right to Complain to Outside Agency

1. In addition to the complaint procedures set forth in this policy, any individual has a right to file a complaint of sexual harassment, racial harassment or other employment discrimination or retaliation with the New Mexico Human Rights Commission, Department of Labor, 1596 Pacheco Street, P.O. Box 4218, Santa Fe, NM 87502-4218 and the Equal Employment Opportunity Commission (EEOC), 505 Marquette NW, Suite 900, Albuquerque, NM 87102-2189. A complaint of discrimination or retaliation must be filed with these agencies within a certain period of time after the alleged act of discrimination occurred to be timely under the federal and state statutes prohibiting employment discrimination.

7.0 ATTACHMENTS

A. Sexual Harassment Examples

B. Sexual/Racial Harassment and Retaliation Complaint Form

8.0 APPROVAL

Approved by: s/Gorden E. Eden Jr.
DPS Cabinet Secretary

DATE: March 3, 2011